

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

ANDREW MILLER,

Plaintiff,

v.

CIVIL ACTION NO. 2:14-cv-16868

DAVID BALLARD, et al.,

Defendants.

ORDER

Pending before the court are the defendant's Motion for Summary Judgment [ECF No. 116] and the plaintiff's Motions for Summary Judgment or to Rule on Summary Judgment [ECF Nos. 118, 122, 123, 124, 127, and 128]. This action was referred to United States Magistrate Judge Dwane L. Tinsley for submission to this court of proposed findings of fact and recommendation for disposition pursuant to 28 U.S.C. § 636(b)(1)(B). On February 21, 2017, the Magistrate Judge submitted his Proposed Findings of Fact and Recommendation [ECF No. 129] regarding the pending motions. The plaintiff timely filed his Objection [ECF No. 130]. The defendants did not timely file objections.


Having reviewed the plaintiff's Objection de novo, the court **FINDS** that it is without merit. Accordingly, the court **ADOPTS** and **INCORPORATES** herein the Magistrate Judge's report in full except to the extent that the court must correct two

minor factual errors contained in the report. First, the court **FINDS** that there are genuine disputes of material fact concerning the use of force against the plaintiff in his cell that prohibit the granting of summary judgment for defendants Miller, Ward, and Blagg on the plaintiff's Eighth Amendment claims. *See* PF&R 13 (omitting defendant Miller's name from the relevant finding). Next, the court **FINDS** that defendants Ward and Blagg assisted in placing the plaintiff in the restraint chair. *See* PF&R 16 (incorrectly stating that defendants Ward and Miller assisted in placing the plaintiff in the restraint chair).

Accordingly, the court **ORDERS** that the defendants' Motion for Summary Judgment [ECF No. 116] is **GRANTED in part** and **DENIED in part**. The defendants' Motion [ECF No. 116] is **GRANTED** as to the plaintiff's Eighth Amendment claims against defendants Miller, Ward, and Blagg regarding the plaintiff's placement in the restraint chair on November 19, 2013. The defendants' Motion for Summary Judgment [ECF No. 116] is **DENIED** in all other respects. The court further **ORDERS** the plaintiff's Motions for Summary Judgment or to Rule on Summary Judgment [ECF Nos. 118, 122, 123, 124, 127, and 128] are **DENIED**.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: March 13, 2017



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE